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OCTOBER MEETING, 1896.

THE stated meeting — the first since the summer vacation — was held on Thursday, the 8th instant, at three o'clock, P. M.; the President, CHARLES FRANCIS ADAMS, LL.D., in the chair.

The record of the June meeting was read and approved. The Cabinet-Keeper reported that Alice Van Alen Mesick had given to the Society a portrait of Peter Isaac Vosburg, of Columbia County, New York, who was a Colonel on Washington's staff in 1776, and was afterward a General in the War of 1812.

It was voted to transfer the names of Samuel Rawson Gardiner, LL.D., and the Rt. Hon. James Bryce, D.C.L., from the list of Corresponding Members to the list of Honorary Members.

The PRESIDENT then said: —

When, twenty-one years ago last April, my name first appeared on the roll of our Resident Membership, that of Lucius R. Paige stood eighth upon it. Already a man of seventy-three, he had then been a member of the Society for thirty-one years. The death of Peleg W. Chandler on the 28th of May, 1889, placed Mr. Paige's name third on the list, those before him being Mr. Winthrop and Dr. Ellis, both younger than he in years, though his seniors here; and when, on the 30th of May, 1894, Dr. Paige rounded out his full half-century of connection with it, the Society for a brief period bore at the head of its roll the names of three persons whose united membership exceeded a century and a half. This, so far as I can ascertain, never happened before; and, certainly, it will not soon occur again. Mr. Winthrop died on the 16th of November, 1894, and Dr. Ellis on the 20th of the month following; and now it is with feelings of unusual regret I announce the death of Dr. Paige, the last of our three half-century members, the single survivor of all those elected in the first half of the century, — the Nestor of the Society. Dr.

Paige died on the 2d of September, in his ninety-fifth year, and in the house in Cambridge in which he had dwelt for more than half his long life. Elected a Resident Member of the Society on the 30th of May, 1844, Dr. Paige had outlived all his generation here, for a gap of nearly sixteen years intervened between him and the next in order of seniority. There is no one of his own day among us to speak of him, — no one even of his own religious denomination; and it must devolve on me, therefore, in announcing his death to pay that tribute to him and to his memory which on these occasions usually, and far more appropriately, comes from some familiar friend, or at least from a contemporary or professional associate, — one who can speak from personal knowledge.

It is not necessary now to give the leading dates and events in Dr. Paige's life; such will more properly be sought for in that memoir which will be incorporated in some future volume of our Proceedings. It is rather to the individual, — to the man as we of a later generation knew him and saw him, that reference should to-day be made. Until extreme age and the infirmities necessarily incident thereto prevented his coming, Dr. Paige was, as nearly all here know, a most regular attendant at our meetings, — so regular indeed, and so invariably of late years the occupant of a certain chair directly in face of the President, that five years ago, at the meeting corresponding to that of to-day, kindly attention was called to his presence in the seat almost prescriptively his, by our associate Mr. Winthrop, who spoke of Dr. Paige's regular attendance for nearly half a century as constituting not the least of his many claims to our regard. But, none the less, Dr. Paige did have other and far higher claims to our regard than attendance at our meetings, or than the contributions he from time to time made to the interest of those meetings. He had, indeed, what on the whole I hold to be the highest possible claim to that regard.

In a notice of him published after his death in the leading organ of the religious denomination of which Dr. Paige was a lifelong and prominent member, I find these words: "We often say of a man 'he has a good character,' and 'he has character.' In these familiar phrases the word 'character' has two dissimilar meanings. If one is truthful, reliable, exemplary, we say that 'he has a good character.' But if we simply say, 'he has character,' we mean to denote a quality of

manhood lying back of what he says or does, and which is too subtle and too great for verbal expression. Dr. Paige had a good character; but far more and profounder, he had character. He had not simply opinions, but convictions that went to the root of his being and which to him had a worth above all terms of estimate.”¹ This is not only discriminating and true, but it is true of Dr. Paige. He so impressed those with whom he came in contact; he so instinctively impressed us, as he sat facing this chair at our meetings. He was the embodiment of that element of “character” in the individual member of the community which, permeating the mass, made the Puritan Commonwealth from the beginning what it was, and sustains Massachusetts to-day. On any question of the time involving a moral issue,—a question of standard right or evasive wrong,—one always knew in advance where to look for Dr. Paige. He might not be prominent, he certainly would not be noisily in evidence; but he would be there. This it was which gave him his force. Otherwise he did not possess the qualities which command general recognition or give wide influence to the possessor. He was not eloquent, nor imaginative, nor philosophic; there was about him no trace of that subtle quality which we describe by the word “magnetism”; but, on the other hand, he was a man of great powers of application and of indefatigable industry, careful, accurate, exhaustive, absorbed in the subject matter upon which he was engaged, and, above all, both physically and mentally, equal to long, sustained effort.

We know Dr. Paige here in his capacity as an historical investigator and writer, but this was only with him the later sphere of mental activity; his chief field of useful labor was denominational, his great work was theological in character. On this subject I do not profess to speak as one having personal knowledge, and so capable of passing a judgment entitled to acceptance; but I am assured that in the Universalist community Dr. Paige was regarded as a profound student, a learned critic, and an accepted authority. In 1833 he published his “Selections from Eminent Commentators”; and later, in 1870, as the result of thirty years of patient, sustained study, he completed in six volumes his “Commentary on the New Testament,” a work of which it has recently been said

¹ The Christian Leader, September 10, 1896.

that to this day it "is the best extant depository of the kind of information that throws light upon the New Testament page. Later scholarship may have made discoveries that modify some of the expositions, and of course has added explanations not possible forty years ago. But Dr. Paige's Commentary has never been displaced, is in no danger of becoming obsolete, is a storehouse of Biblical facts and wisdom." As an active and prominent member of the Universalist community, Dr. Paige was one of the founders and promoters of Tufts College, and from that institution he in 1861 received his degree of Doctor of Divinity, as in 1850 he had received recognition in the form of another honorary degree from Harvard. He thus lived and died a shining light in that liberal denomination in which he early enrolled himself.

Here, however, we did know him in his other character, that of the patient, faithful, indefatigable historical investigator, — the author of the "History of Cambridge" and the "History of Hardwick." It was from these sources, as he delved in the mine of local and genealogical lore, that he drew the material which he from time to time contributed to our Proceedings, such as his account of the Harlakendens in 1845, his reminiscences of the Vassall Family in 1858, and his remarks on the Early Account Books of Harvard College, and on the Stewards of Harvard College, in 1860 and in 1861. Beyond these his contributions did not go; and it is a somewhat singular fact that in his whole long connection with the Society, though in 1859 he paid a brief tribute to Henry Bond, an Associate Member, and in 1860 a similar tribute to Sylvester Judd, a Resident Member, our volumes of Proceedings contain no formal memoir from his pen. He served on the old Standing Committee of the Society in 1854 and again in 1855, and from time to time acted as a member of various special committees, but otherwise he was not specially active in the government of the Society, or identified with it.

As I just said, it was as a local or town historian that we here best knew Dr. Paige; and as a local and town historian he was a model. Thorough, patient, untiring, loving study and investigation for study and investigation's sake, not craving a large audience nor ambitious of applause, absorbed in his subject and absorbing his subject in himself, his life and

his pleasure were in his work. He had his reward, too; for his work will stand. As a town and local historian he will not be forgotten. And, indeed, this is one distinct advantage the faithful local historian has over his more ambitious brother, the so-called general historian, or historian on the large scale. His readers may not be so many, or his fame so great; probably he will occupy the attention of the critics far less, and his labors will hardly excite a notice outside of narrow territorial limits. Gilbert White, it is true, did write "The Natural History of Selbourne," just as did Isaac Walton "The Complete Angler"; but I am unable to recall any local history, unless perchance Dietrich Knickerbocker's somewhat famous account of early New York, which has secured and held the attention of what is called the reading public. Take Hardwick or Cambridge, for instance, the two subjects to which our dead associate devoted so many years of his long life. I greatly doubt whether, if Lord Macaulay or Thomas Carlyle or Froude had made those towns their subjects, they would have found, or if they had found would have held, any considerable circle of readers. The miscellaneous and local writings of Walter Scott are to-day wholly neglected. But, on the other hand, the faithful local historian has his compensation. He may not have a large audience or many interested readers; but the audience he does have he holds, and by it is not forgotten. General history it is said requires to be rewritten at least once in each generation; and certainly we have not yet got the last word as regards even Greece and Rome. It is, I fear, safe also to say that as the years glide by the general reader will have less and less recourse to even the most considered of the popular and philosophical historians of our day, until their collected works also will one by one be relegated to the upper shelves in our libraries, — those "cemetaries of departed reputations," as Hallam has called them, where "the dust accumulating on the untouched volumes speaks as forcibly as the grass that waves over the ruins of Babylon." This fate at least the faithful town historian is spared; nor, probably, is it too much to say that Dr. Paige's "Cambridge" and "Hardwick" will be more read and consulted a century hence than they are to-day, or even than they were when yet fresh from the press. His "Selections from Eminent Commentators" will share the fate common to all

theological works, nor will the six volumes in which it is included save his exegesis of the New Testament from a similar fate; but so long as the territorial localities we know as Cambridge and Hardwick are inhabited by human beings, so long in all probability will the number of those increase who wish to know something of the past of the community to which they belong, and of the earlier generations from which they are derived; and all such will have recourse to the volumes of our dead associate. No one will hereafter have occasion to re-write those narratives. Thus, after closing a long, industrious, useful life, — a life harmful to no one, — Dr. Paige could go to his rest full of the assurance that his leaf at least was not destined to wither, or his work wholly to perish.

Through the death of Dr. Paige, our Librarian and Vice-President, Dr. Green, becomes our senior member, — thus adding to the other titles I have mentioned that of Dean of the Society. Measured in years merely, it is a long stride which is taken. Dr. Ellis, the last Dean who was a graduate of Harvard, belonged to the Class of 1833, and became a member of the Society in 1841; Dr. Green, who thus so closely follows him, was of the Class of 1851, and became a member of the Society in 1860. Mr. Winthrop's name stood at the head of our list for over twenty years; and I am sure his possible successors would gladly know that Dr. Green's name is destined to grace the same position for an equal, or, indeed, even longer term.

At our May meeting seven years ago the name of Ernst Curtius was inscribed in our roll of Honorary Members; and on the 12th of July a cable message advised us of the death of Dr. Curtius on the previous day, in his eighty-second year. Born at Lübeck on the 2d of September, 1814, — the period of the great German uprising against Napoleon, — Dr. Curtius was one of that group of profound German students and investigators of whom Niebuhr and Mommsen are the accepted prototypes. They have re-written the history of the times with which they dealt. Studying in his youth Hellenic development on the soil of Greece, between 1844 and 1870 Dr. Curtius gave to the world that succession of erudite works with which his name is identified. I am not aware that he ever visited America, and others here can possibly speak of him and of his labors

more appropriately than I. I confine myself therefore to the simple announcement of the great scholar's death.

Turning to other topics of a more material character, I am glad to inform the Society that, though the city of Boston has not as yet purchased this estate, as recently recommended by the present Mayor, it has renewed its former lease of the two lower stories of our building for a term of five years from the 1st of July last, taking at the same time an option to purchase the whole property at any time on payment of the gross sum of \$200,000. The subject was fully discussed at the Annual Meeting of the Society in April last.¹ This action on the part of the city again places the current finances of the Society on a thoroughly sound basis. The income once more exceeds the outgo. On the 1st of July, when the city resumed its occupation, the premises had been vacant for the period of twenty-one months, involving for the Society a loss in rental of \$15,750, a sum which it could ill afford to spare, inasmuch as the having it or not having it must materially affect our power to build elsewhere. As the case now stands, the city is in occupation of the two lower stories of the building, for which it pays \$9,000 a year rent; and it has the right at any time to purchase the whole estate at a price which would put it in possession of the whole five stories at an annual cost to it of less than \$8,000; under these circumstances the inducement to purchase would seem to be obvious, for it is difficult to conceive of anybody or anything, except a municipal organization, leasing half a building at \$9,000 a year when it can at any time have the whole of it for less than \$8,000 a year; but the affairs of municipal bodies are seldom managed on business principles in general acceptance.

It hardly needs to be added that, under these circumstances, no further steps have been taken towards perfecting plans and beginning work on the proposed new building. Under the present agreement with the city, the Society, it should be understood, may be called upon any day to pack up its furniture, books, and collections, and vacate these premises; — it occupies them in fact merely as a sort of tenant-at-will, liable to have its occupation terminated by a notice to quit in reasonable time. The period since the first of July has, however, not

¹ 2 Proceedings, vol. x. pp. 576-578.

been one during which men of a fair degree of prudence and forethought have cared to mature plans, or consider arrangements involving contracts and an outlay which extend far into the future. I refer of course to the issues involved in the national canvass now going on.

It is needless for me to say that the discussion of current political topics has never been suggested, much less encouraged, in the meetings of this Society. We cannot of course go back to the War of 1812, but a few — seven only in all — of those whose names still stand first on our roll were chosen into the Society before the end of the War of the Rebellion; and I think I am right in saying that even then, — during that period of mortal agony, when the souls of those here were overflowing with grief for those who were dead, or with anxiety on account of those who were wounded or in danger, — even during that period of utmost tension, on one or two notable occasions only was any reference to current events made in this room; and the correct tradition of what then took place, I may further add, is supposed to have passed away with our late President. He loved in characteristic way to dwell on those incidents; and one of them which was marked by a sharp and most healthy explosion on the part of the late James Savage has been preserved, on the authority of Dr. Ellis, by our late associate Octavius B. Frothingham in his book entitled "Boston Unitarianism" (p. 178). The unwritten law which excludes political allusion even, much more its discussion, from these meetings is, moreover, in every way proper and desirable; and I certainly have no intention of deviating from it to-day, or inviting any general debate on vexed current topics, the unending noise of which elsewhere is certainly wearisome enough. Nevertheless, there are connected with presidential elections in general, and with the present one perhaps in particular, certain abstract considerations not without an historical bearing. These have an interest; and, possibly, it is not otherwise than appropriate, and in conformity with the everlasting fitness of things, that, while the tempest is raging without, we should meet here and placidly philosophize over certain abstract aspects of the situation.

A short time since our Honorary Associate Carl Schurz — whose name by the way was placed on our roll on the same day

as that of Dr. Curtius — made a very remarkable campaign speech at Chicago, in the course of which he mentioned the fact that he had a distinct recollection of ten presidential elections. Presumably Mr. Schurz in this statement did not include the present election, so the succession of elections he referred to began with that of 1856, — the Buchanan-Fremont campaign so called. Though I am not by several years so old a man as Mr. Schurz, my native birth causes me to go further back than he in this somewhat dismal record, and I can say that I have a distinct historical recollection of twelve presidential elections, beginning with that of 1848, which resulted in the choice of Zachary Taylor. Doubtless there are in this room those who go yet further back to the “Henry Clay and Frelinghuysen” campaign of 1844, and even to the “Tippecanoe and Tyler too,” of 1840; but my recollection of those is too child-like and uncertain to be classed as such. I do, however, as I have said, remember distinctly and vividly each of the twelve elections beginning with that of 1848, and I will add that it is curious, and not otherwise than instructive, now to look back over them through the perspective of years. It is surprising when thus reviewed how very suggestive they are of the truth of Disraeli’s famous aphorism that, in politics, it is the unexpected which is apt to occur; which is indeed only another way of expressing that extreme doubt most men, as they get older, grow to entertain of their own judgments. The fact is, as that somewhat caustic Oxford Don once put it, “we are, gentlemen, none of us infallible, not even the youngest.”

Some years ago, I believe in the course of a presidential canvass, I had occasion to deliver a political address. The campaign was at its height; and, as usual, the orators were assuring their audiences that there had never probably been any election more momentous in its consequences than that about to take place, — that, indeed, the life of the nation might almost be considered as trembling in the balance. I began the speech I then delivered by remarking that I then remembered a certain number of presidential elections, — the number has since considerably increased, — and, looking back over them, I realized that of them all one only — the second election of Lincoln in 1864 — was of any real moment; and, indeed, all the others might equally well have gone differently from the way they did go, without materially affecting

the ultimate course of events; and I went on to add that the election then pending was, in my judgment, no exception to the general rule. In other words, so far as remote results were concerned, it made very little difference which party in the state just then prevailed. The remark I also remember failed to elicit any, even the faintest, indication of approval. It fell, on the contrary, upon my audience much as a douche of cold water falls on a collection of excited dogs. Yet, all the same, it was perfectly true; and I think I am prepared, speaking historically, to say the same thing even at this much later day, — in other words, looking back now over the dozen elections of which I have personal recollection, my judgment would be that one of them only — that of 1864 — was of permanent importance as materially affecting what may be called the great trend of national events, — the deep flowing current of development in a people's destiny.

Take for instance the first — that election of 1848 — immediately following the iniquitous Mexican war, the incorporation of Texas into the Union, and the acquisition of California. The opposing candidates were General Zachary Taylor and General Lewis Cass. General Taylor was the candidate of the Whig party, and when he was nominated, — they called him "Old Rough and Ready," — Mr. Webster indignantly characterized the nomination as one "not fit to be made." My father, I well remember, refused to abide by it; and, leaving the Whig party then and there, became himself the vice-presidential candidate of another party, with ex-President Martin Van Buren's name at the head of the ticket. It was the first considerable political cleavage on the slavery issue. A great issue growing immediately out of the Mexican war, but involving the fundamental principle of national unity and life, was slowly but surely shaping itself; and it is plain enough now, looking at it in the light of subsequent events, that the election of Taylor or the election of Cass — four years of Whig supremacy or four years of Democratic supremacy — could at that stage in no serious degree affect the irresistible and inevitable course of development.

Contrary to Mr. Webster's judgment of the nominee, General Taylor proved in the result an exceptionally good and solid stick of presidential timber, to use a newspaper simile, and his too early death afforded good cause for national lamentation;

but during that divided administration four years of Union-saving compromise passed away, the great underlying issue moving steadily forward in its allotted course, until in 1852 Franklin Pierce and Winfield Scott, both Generals again, were the opposing candidates. The campaign of 1852 is chiefly memorable as that in which one of the candidates first took a direct part in discussion as a speaker in his own behalf, — a custom which in the present campaign has grown to such very abnormal dimensions. Prior to that time it was accepted almost as a political axiom that a presidential nominee was lost if he opened his mouth or put pen to paper; and Henry Clay in the canvass of 1844 was cited as a warning example. The canvass of 1852 furnished another example. Poor General Scott on an evil day for himself took to speechmaking, — and neither his speeches nor the effect they produced on his prospects has passed out of the memory of those who recall that time. General Scott was doubtless a very excellent military commander; but there is at least equally little room for doubt that he was a very poor political campaigner. Had he been elected President instead of Pierce, the so-called compromise measures as respects slavery passed during the previous administration probably would not then have been disturbed, — the inevitable might for a brief period have been deferred; but few thoughtful political observers would, I fancy, now maintain that the great course of events then pressing to a solution would have been materially influenced.

Then came the election of 1856, — the first campaign fairly and fiercely fought out on the slavery issue. The Whig party had disappeared, and the Democratic party had thrown in its lot with the Slave power; the compromise measures of 1850 had been broken up; Charles Sumner had been assaulted in the Senate chamber by Preston S. Brooks. It was in that election I threw my first vote; and no one, I think, who voted in that election is likely ever to forget it. The new party of freedom as it was called — the Republican party — drew a ticket in the presidential lottery, — it might prove a prize, it might prove a blank, — and nominated Colonel John C. Fremont; and then followed that fierce and ludicrous “Pathfinder” and “We’ll give ’em Jessie” campaign which it is impossible for one who took an eager part in it to look back on now without a certain feeling bordering on what is known

among the young as sheepishness. What faith we did have in our cause and in our leader; and how little we understood what was for our own good! How Whittier sang,

“ Rise up, Fremont, and go before,
The hour must have its man;
Put on the hunting-shirt once more,
And lead in Freedom’s van ”!

Very clearly now can I recall that night, forty years ago, of the decisive October elections. Filled with faith, and confident of an assured victory, I had gone in from the country to get the returns as they came in from Pennsylvania. Not for a moment did I doubt of victory. But when at last they came, those returns told another tale. The Democrats had carried Pennsylvania, — the Keystone State! The day was lost! All seemed lost! I was, I remember, absolutely stunned. I can see now the hard, white road bathed in the silent light of the brilliant full moon, over which I drove on my midnight return home. I didn’t know it at the time, but I now realize how that cold, round moon was simply repeating to me over and over again Emerson’s famous words, “ Why so hot, little man ? ” Politically, I am sure I never felt so badly in my life, before or since, as I felt during that silent drive; yet in reality what an escape for us it was! As I have often since had occasion to observe, a premature victory may be a much greater disaster than a temporary defeat. In 1856 the Republican party was not yet ready to assume control of the government; the country was not educated up to the crisis it was doomed to face; the great issue was not ripe for solution. While the defeat of Buchanan and the election of Fremont in 1856 might have precipitated the conflict of 1861, it could not have averted it.

So four years more passed away, and, in the ripeness of time, the fateful election of 1860 took place. It ushered in the great rebellion. It was an awful election. As I now look back on it through the long vista of thirty-six years, a lurid light seems to hang over it, presaging what the immediate and dreadful future had in store. It was the “ Wide-Awake,” “ Rail-Splitter ” campaign, — the campaign of torchlight processions, of shouting, marching, and countermarching, — the tramp of an army in motion seems now to echo and reverberate from it, while the heavens resounded with detonations, and glared and sparkled

with fireworks ; we did not realize it, but it was in fact the gathering of the hosts, — the stage rehearsal of the coming tragedy. And yet we now see that the election of 1860, had it gone the other way, would in all probability have in no wise changed the great trend of events. It would have been merely 1856 over again. The issue was ripening, and was inevitable, — it was merely a question of a little earlier or a little later ; had it not been in 1860, it would have been in 1864.

But it was in 1860 that the issue was made ; and, being then made, the election of 1864 became of exceptional importance ; for, as Mr. Lincoln characteristically pointed out, the swapping of horses while in the act of fording a river, and such a river, is an act of more than questionable wisdom. Few persons will, I think, now deny that a course of political events which had led up to a transfer of the government in 1864 to the hands of those who declared the war in its then critical stage a failure, could scarcely have failed permanently to influence the great current of subsequent history.

It is not necessary for my present purpose to follow in detail the course of the later elections. My own feeling is that the decision of none of them one way or the other would have influenced more than temporarily the grand total of results accomplished through the war. The process of readjustment, as it seems to me, may have been accelerated by what actually took place, or might have been retarded if that had occurred which in point of fact did not occur ; but it would have been merely a variation in the swing of the pendulum, not a displacement of it. On this point, however, others may well entertain a different opinion, and the period is not yet sufficiently remote to be discussed historically.

Coming now to the somewhat delicate ground of the present election, and looking at it in a broad way, it may not be improper even here to ask ourselves in a calm, philosophic spirit, whether, in view of the issues presented, the usual ordinary rule of slight moment applies, or whether this constitutes a second instance, in the course of nearly sixty years, of an election of marked and exceptional importance. I am now inclined to think that it does ; and in a wholly unpartisan spirit I would like, if no objection is made, to put on record my reasons for this conclusion ; for hereafter it may not be without interest to the historical investigator to find in our

Proceedings some statement of how the issue now presented was at the time looked upon, not by the politician, but by those who tried to approach it from the historical point of view.

The great issue, then, as now made up, is sharply defined. It is distinctly and definitely proposed to maintain on the one side, and on the other side to change, the accepted measure of monetary value. Further, if the change is decided upon, it is not to be gradual; but, as a measure of value, one precious metal (silver) is, through free and unrestricted coinage, to be substituted for the other (gold). Assuming perfect honesty of intention and equal public spirit in both parties to the struggle, the question is simply as to the importance, the momentous nature of the issue involved, as seriously, or otherwise, affecting the great course of events.

Whichever way it is looked at, it seems to me scarcely to admit of question, a more momentous issue could hardly be presented to a people. In his extremely interesting and timely book, recently published, called "Democracy and Liberty," our Honorary Associate Mr. Lecky referred to the discovery of America as producing, among other wide and far-reaching effects, one the most momentous of all. To quote his words, "The produce of the American mines created, in the most extreme form ever known in Europe, the change which beyond all others affects most deeply and universally the material well-being of men: it revolutionized the value of the precious metals, and, in consequence, the price of all articles, the effects of all contracts, the burden of all debts" (vol. ii. p. 235). This great change then arose from natural causes, and came about gradually; changes of a similar nature, though scarcely on the same scale, have repeatedly, in the history of the world, been brought about, usually through governmental action, as in the case of our own Revolutionary continental currency, and again our legal tender system in the recent rebellion; but these changes have, as a rule, come about more or less slowly; and no principle is better established than that in all cases of such changes time is an essential element in any successful readjustment. But in the present case the proposed substitution of one measure of value for another, and wholly different, measure is to be made finally and at once, as the result of a popular election and

almost on a given day. Looked at simply from our, the historical, point of view, no larger economical and social experiment, nor one more bewildering in its possibilities, was probably ever proposed by any responsible political organization.

Should the popular verdict on the 3d of November be in favor of the experiment, there are two views entertained as to its probable result; and whichever of the two views proves to be correct, the result will be equally interesting. On the one side the contention is that the action of the United States alone in admitting silver to free coinage at a ratio of sixteen to one with gold would at once, and throughout the world, practically double the value of silver, raising its price in gold from the current quotation to-day of 60 cents an ounce to \$1.29; and this the candidate of one of the two great contending parties publicly and confidently declares will take place the day after his election to the Presidency is assured. Assuming this to be the case, and that prices in the United States, except in the case of silver, are not affected, it must apparently follow that in all countries where silver is the measure of value, — in other words, throughout Asia, Mexico, and large portions of South America, the habitations of more than half of the human race, — in all these countries, through the action of the United States alone, the accepted measure of value would be suddenly doubled, with all those consequences which, in the language of Mr. Lecky, “most deeply and universally [affect] the material well being of men.” A more startling historical catastrophe could not easily be conceived.

On the other hand, the contention of those who propose to hold by the existing measure of value is that an established policy of free silver coinage on the part of the United States would result only in a comparatively small rise in the present value of silver as compared with gold; while it would substitute silver for gold as the measure of value in this country, with all the consequences for those inhabiting the country which, once more quoting the language of Mr. Lecky, “most deeply and universally [affect] the material well being of men.”

In the one case, therefore, it would seem that, as the result of the canvass now being conducted, an experiment such as the world has not seen before is to be tried at the expense of all

present silver standard countries ; while in the other case it is to be tried at the expense of this country alone. In either event, should the election result in a certain way, the experiment is to be tried. This is not the place, nor is it my intention, to express an opinion on the merits of the issue presented, or to venture any predictions as to the probable outcome of the experiment, if the popular verdict in November decides that it shall be made. I merely state the case, and the apparent alternative presented. There seems to be no escape from the dilemma ; and if the experiment involving that dilemma is decided upon, it can hardly fail to present, either at the expense of this country or at the expense of those countries now employing silver as their measure of value, an historical study of surpassing interest. Whichever party to it may prove to be right, it would seem, therefore, safe to say that the present canvass, which took shape shortly after we last met, and the outcome of which all here are observing with such keen interest, cannot be classed among the ordinary presidential contests and those of little moment. Should the popular verdict be in favor of the proposed monetary experiment, it can hardly fail to result in consequences which future members of this Society will study with profound interest. For myself, therefore, I am inclined to consider the present election as involving, from the historical point of view, issues not less momentous than those involved in the election of 1864. I should class it as one of exceptional importance, wholly irrespective of the side which any person might advocate. It can be hardly otherwise than curious hereafter to note how far this view of the matter may have been influenced by a too close proximity to the event.

Mr. HENRY W. HAYNES, having been called on, spoke as follows : —

Although I never had the privilege of a personal acquaintance with Professor Ernst Curtius, as one who has given some attention to the study of Greek History and Archæology, I feel that it is eminently fitting for our Society to give some formal expression to its sense of the great loss it has sustained by his death. His was the most eminent name upon the roll of our Honorary Members, with the possible exception of his

distinguished colleague, Professor Theodor Mommsen, the historian of Rome.

As we call to mind the circumstances of Curtius' life, we feel that he was exceptionally fortunate in his preparation for his life work. It might be almost regarded as providential that a young man, only twenty-three years old, should have been selected to act as tutor to the children of Brandis, who accompanied King Otho, of Bavaria, to Athens, in 1837, in the capacity of Privy Councillor. The two years he was thus enabled to spend in Greece in study and in travel, through the Peloponnesus in company with Karl Ritter, the great classical geographer, and at Delphi with Ottfried Müller, the accomplished archæologist, at the time of his lamented death, were of priceless advantage in fitting him for those investigations which he afterwards carried out with such fruitful results.

After his return home, and while he was employed as instructor in a gymnasium at Berlin, he was fortunate enough, by a brilliant lecture upon the Acropolis of Athens, to attract the attention of the Princess Augusta, the wife of Prince William of Prussia, so that shortly after, in 1844, he was selected by her to be the tutor of her son, the future Emperor Frederic. This gift of eloquent speech always stood Curtius in good stead his life long; it was employed in solemn addresses before the University upon the birthday of the King of Prussia, and in promoting those undertakings upon which he had set his heart; and enhanced by his intimate relations with the royal family, it greatly facilitated the establishment of the German School of Classical Studies at Athens, and the explorations at Olympia, which will be ever associated with his name.

For six years he continued to direct the studies of his distinguished pupil, in the mean time giving to the world in 1850 his study upon "The Peloponnesus," which still remains the most important work upon that region. In 1856 he was made Professor at Göttingen, from which University he was called to Berlin in 1869. That city always continued to be his home, and he ever held a very distinguished position in its literary society. He had already published, in 1867, the great work upon which his reputation will always rest secure, —his "History of Greece," in five volumes. I think this will

never be superseded ; for it is scarcely possible for any writer to be better equipped for the historian's task, both by knowledge of the topography and the antiquities of the country and by familiar acquaintance with its literary remains.

The most important work of his later years was the supervision, from 1876 to 1880, of the excavations at Olympia, carried on at a great expense by the German government. These were unquestionably prompted by the interest excited in the mind of the Crown Prince Frederic by an address upon Olympia, delivered by Curtius in 1852 ; and their effect in promoting our knowledge of Greek art and antiquities cannot be overestimated.

Curtius did not lack for proper appreciation in his lifetime, and he was made the recipient of very unusual honors. In 1884 a fine bust of himself was presented to him by his admirers, including nearly a hundred American scholars, with the historian Bancroft at their head ; and on his eightieth birthday a copy of this bust was set up at Olympia and crowned, while addresses in his honor were delivered by scholars of different nationalities then resident in Greece.

He has gone to his rest in the fulness of his years and his honors ; and we, in common with the scholars of all countries, desire to pay to him the tribute of our respect and admiration.

An informal discussion then took place with relation to the manuscript of Bradford's History of Plymouth and some other subjects, in which the Hon. GEORGE F. HOAR, Messrs. JUSTIN WINSOR, EDWARD L. PIERCE, CLEMENT H. HILL, A. C. GOODELL, Jr., WILLIAM R. THAYER, CHARLES C. SMITH, and others participated.

The Hon. EDWARD L. PIERCE called attention to a small volume on the table, and spoke in substance as follows : —

My apology for occupying the time of the Society with a family enterprise, — a sketch of my maternal grandfather, Major John Lillie, 1755–1801, and an account of the Lillie family of Boston, 1663–1896, — which, now printed in a volume (pp. 122), has taken the better part of my time for a half-year or more, is that it touches matters of general interest, particularly in the history of Boston.

Major Lillie served as a soldier through the Revolutionary

war; was a captain in Colonel John Crane's regiment of artillery; took part in the retreat from Long Island and in the campaigns in New Jersey and Pennsylvania. He appears to have been a brave and trusted officer, and skilful in planning fortifications. The artillery, though small in numbers, was a very effective arm of the service, and was much under Washington's immediate eye. From May 1, 1782, to the end of hostilities, Major Lillie was on the staff of Major-General Henry Knox, whose headquarters were at New Windsor on the Hudson, in a mansion, still well preserved, which I visited last June.

Major Lillie was an original member of the Society of the Cincinnati, signing at the same time with his friends Knox and Samuel Shaw, the last-named being his kinsman. After the war he embarked in trade in Boston and Milton, and went upon voyages to the South and the Mediterranean, assisted in these enterprises, to some extent, by his maternal uncle Samuel Breck,¹ the well-known Boston merchant, and his father-in-law Daniel Vose, the principal man of business in Milton; he formed at one time a partnership with General Knox for catching salmon at the mouth of the Penobscot; but he did not find success in any of these ventures. He again sought a place in the army, and the kindly and neighborly interest of President John Adams at length secured for him the appointment of captain in a new corps of artillerists and engineers. He was assigned to the command of the post at West Point June 17, 1801. He had now a sense of security, and took pleasure in his congenial duties; but death was at hand. He died suddenly of apoplexy September 22 of that year. The Military Academy was then in a formative condition, and his son was the eighth cadet admitted.

The Lillie family first appears in Boston in 1663, in the person of Edward Lillie, who seems to have done a considerable business at the North End, where he had a wharf bordering on the Town Dock and the Conduit, the curious reservoir of that day. He was undoubtedly an Englishman, but the place of his English origin is unknown. As the family had held to the time of the Revolution a fishing "plantation" at St. John's, Newfoundland, acquired in the seventeenth century, there is reason to suppose that, like other settlers of that town, they emigrated from the West of England to St. John's, and

¹ Father of the author of the "Recollections,"

thence removed to Boston, there having been an active trade between the two places as early as 1645, which increased greatly during the next fifteen years. After the peace of 1783 the British government dispossessed the family of the property, without compensation, taking the ground that they had become aliens, and could not therefore hold it under the Acts of Parliament of 1699 and 1775; but the papers in the case create a suspicion that this arbitrary proceeding was prompted by a spirit of retaliation, — it being the time when the estates of British Loyalists in this country were being confiscated.

The sons of Edward Lillie were all ship-owners or mariners; and their careers illustrate the spirit of commercial adventure which distinguished New England at the close of the seventeenth and the early part of the eighteenth century. Samuel, the eldest, married a daughter of Theophilus Frary, deacon of the Old South Church, who in his theological zeal disturbed the rites of the English Church at Edward Lillie's funeral, and was in consequence bound over to keep the peace.¹ Samuel Lillie (born 1663, died 1730) built a large number of vessels in the shipyards of Essex and Plymouth counties, which he sent to the West Indies and Europe, and he is likely to have been the largest ship-owner of his time in Boston; but he undertook more than he could accomplish, and his career as a merchant ended in failure. His wife's mother was an Eliot of the South End family (to which the Apostle Eliot belonged), and this connection brought him into relations with Isaac Royall, of Medford, father of the Loyalist of the same name. A suit between Lillie and Royall on a bond given by the latter was in the courts for half a century, surviving the original parties and showing a pertinacity in litigation rarely equalled in our time. Paul Dudley and John Valentine appear as prominent lawyers of that period.

Thomas Lillie, brother of Samuel, married a sister of Sir Charles Hobby. He commanded a private ship of war which cruised in the Mediterranean at the time of the war of the Spanish succession; and he died in 1704 at Cagliari in southern Sardinia from a wound received in an encounter with a Spanish ship. It appears by his nuncupative will proved six years

¹ The story is told in a letter from Joshua Moodey to Increase Mather, printed in 4 Mass. Hist. Coll. vol. xiii. pp. 370, 371. In their foot-note the Editors incorrectly give Lillie's Christian name as Samuel instead of Edward.

afterwards in Boston that he had funds, proceeds of prizes, at Tunis, Leghorn, and Lisbon. The maritime adventure of our fathers thus led them into freebooting in distant seas. Thomas's widow, after a due season of mourning, married Oxenbridge Thacher, the elder, and became the mother of the distinguished patriot lawyer of the same name.

The Lillie of the next generation was Theophilus (born 1690, died 1760, first of the name, father of Theophilus the Loyalist, who was the uncle of Major John Lillie. He married a daughter of John Ruck, a solid man of Boston in his day, much occupied with municipal offices, whose wife was Hannah Hutchinson, daughter of Colonel Elisha Hutchinson, and aunt of the last Royal Governor of Massachusetts. This blood connection brought the Lillies and Hutchinsons closely together, and the intimacy was kept up at Halifax between Theophilus Lillie and his widow and the family of Foster Hutchinson.

The progenitor of the Lillie family in Boston is perpetuated only in the sixteen descendants of Major John Lillie and in those of two of his sisters, whose progeny is numerous. One of them married Samuel Howard, reputed a member of the "Tea Party," and her posterity is well known in Cambridge and Boston. From her came the Whites of Watertown, bearing in Cambridge, now or in recent times, the names of Lowell, Howe, Elliott, and Devens; the Fays, descendants of Judge Samuel P. P. Fay, of the same place; and the Gilmans, descendants of Rev. Samuel Gilman of Charleston, South Carolina. Other descendants of Mrs. Howard are living in Georgia.

In this study of local and personal history, particularly as to affairs in Boston, in the latter part of the seventeenth and the whole of the eighteenth century, I have been much aided by the Suffolk Court Files, only recently opened to investigators, now arranged in well-bound volumes and indexed, — a work which has been well executed under the direction of our associate Mr. Upham.

MR. CLEMENT HUGH HILL communicated a memoir of the late Hon. Rufus Choate which he had been requested to prepare for publication in the Proceedings.

A new serial number of the Proceedings, containing the record of the May and June meetings, was ready for delivery at this meeting.

MEMOIR
OF THE
HON. RUFUS CHOATE.

BY CLEMENT HUGH HILL.

RUFUS CHOATE, the second son of David and Miriam (Foster) Choate, was born in the district of Chebacco (since incorporated as the town of Essex), in Ipswich in Essex County, Massachusetts, on the 1st of October, 1799. His family, which had been in the county since its first settlement, belonged to the well-to-do New England yeoman class, and the name is common in Essex County, and has been borne by some other distinguished men. Dr. George Choate, of Salem, Mr. Choate's first cousin, was father of four sons, three of whom have gained reputation as lawyers, and one as a physician. Joseph Hodges Choate, now a leader at the New York bar, is one of these. David Choate, a man of influence and substance, politically a strong Federalist, died in 1808, and the training of the young family thus fell to their mother (daughter of Captain Aaron Foster), who was in every way equal to the responsibility, and to whom her children were deeply attached. Her second son is said to have greatly resembled her in features, and to have inherited from her his wit and humor. She died in 1852.¹

Choate's boyhood was that of the New England country lad of his class and time. He helped in the labor on the farm, and went to the town schools. He early showed a love of

¹ For the particulars of Mr. Choate's life the writer is chiefly indebted to Professor Brown's "Life and Writings of Rufus Choate," and to Judge Neilson's "Memories." Mr. E. G. Parker's "Reminiscences," although not without interest and value, are somewhat apocryphal, and must be accepted with great allowances. Professor Brown's defects are owing to his not being a lawyer. He is most painstaking and generally most interesting. Mr. Whipple's little book of "Recollections" is also of interest.



Engraved by H. Wright Smith from a Photograph by Southworth & Hawes

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reading, and eagerly devoured everything within his reach. Bunyan's "Pilgrim's Progress" was his first favorite, and afterwards, singularly enough, a widely different book, a Memoir of Marshal Saxe, which the family happened to own. Besides these, we are told that while young he also read Rollin's Ancient History, Plutarch, Telemachus, and Hutchinson's History of Massachusetts. At ten he began to study Latin under Dr. Thomas Sewall, a young physician, afterwards his brother-in-law, and early evinced that love for the classics which distinguished him through life, and colored all his speeches and literary work. In January, 1815, he went to the Academy at Hampton, New Hampshire, to complete his preparation for Dartmouth College, which he entered in the following autumn.

His inadequate preparation at first put him to a disadvantage at Dartmouth, but by hard work he rapidly overcame this, and the tradition long lingered in the college halls that there had never been known such a scholar within them. His studies and reading extended far beyond the ordinary curriculum, and he graduated with the valedictory address and with a high reputation for both scholarship and ability in 1819. A year was next spent at Dartmouth as Tutor in Classics, after which, having selected the law as his profession, he entered the Harvard Law School. In February, 1822, his brother-in-law, Dr. Sewall, who had settled at Washington, procured him a place as pupil for some months in the office of Mr. Wirt, then Attorney-General of the United States.¹

This early acquaintance with the capital of the country was of great service to a young man like him and of his limited experience. "It enlarged," says his biographer, "his knowledge of public men and of affairs. He became familiar with the public administration. He spent some hours almost daily in the Library of Congress. He began to comprehend still more fully the dignity of his chosen profession. He saw Marshall upon the bench, and heard Pinkney in the Senate and in his last speech in court; and thenceforth became more than ever an admirer of the genius of those eminent men." Family affairs caused him to leave Washington before the end of the year. He finished his studies with Mr. Asa

¹ Mr. Corwin, Chief Justice Chase, and Mr. Justice Swayne were also, we believe, at different times students of Mr. Wirt.

Andrews, of Ipswich, and Mr. David Cummins, of Salem, and in September, 1823, was admitted to practice in the Court of Common Pleas, and two years later in the Supreme Judicial Court.

He opened an office first at Danvers, removing to Salem in 1828, when Mr. Cummins was appointed a Justice of the Court of Common Pleas. At first he practised a good deal in the criminal courts with great success, and it is said that "no man was convicted whom he defended." But while this taught him how to examine witnesses and to address juries, and gave him the confidence and self-possession so essential to a *nisi prius* lawyer, the pecuniary return was not great, and at times he was discouraged. He felt able, however, in 1825, to marry a young lady to whom he was deeply attached and had been some time engaged, Helen, daughter of the Hon. Mills Olcott, of Hanover, New Hampshire; and about this time his clients rapidly increased in number and importance. His name first appears in the Reports in the case of *White v. Winchester*, in 1826, and reported in the sixth of Pickering, and also in three other cases in the same volume. The next year it appears in six cases, the year afterwards in three, and by the time he was thirty he was arguing cases on an equality with John Pickering, Leverett Saltonstall, and other leading lawyers in the county, old enough to be his father; and he appears as counsel in other cases with men like Shaw, Hubbard, and Fletcher, of Boston, who occasionally attended the Essex courts.

In 1826 and 1827 Choate represented the town of Danvers in the Massachusetts House of Representatives, and in 1829 he was one of the Senators from Essex County; and his reputation and his personal popularity were so great that in 1830 a successful movement was started to send him to Congress from the Essex South District. His opponent was Benjamin W. Crowninshield, who had sat for it for eight years, and was a man of large wealth and of high social position, as well as a veteran politician, who had been Secretary of the Navy under Madison, when Choate was a boy at Hampton Academy, and who was by no means willing to give up a seat which the traditions of Massachusetts at that time entitled him to regard as almost a permanency. A bitter contest ensued. Choate's candidature was opposed as that of a young, inexperienced

man, who had only stopped at Salem "while he oated his horses on his way to Boston." He was, besides, outside of the charmed circle which in those days so influenced Massachusetts politics, and in allowing himself to be a candidate he was looked upon as presumptuous and over-ambitious. He himself had grave doubts whether he ought to allow his name to be put forward for an honor which he had not sought and could ill afford to accept, but he gave way to the wishes of his friends, and in the end was triumphantly elected. "The matter of my election," he says, in a letter to his old college friend Dr. James Marsh,¹ "I do suppose rather a foolish one on my part; but the nomination was so made that I could not avoid it without wilfully shutting myself out of Congress for life, since my declining would undoubtedly have brought forward some other new candidate, who, if elected, would go ten years at least, long before which, if living, I might have removed from the district. The opposition which was got up was formidable, for noise and anger at least, and the wonder is so little came of it. . . . Political life, between us, is no part of my plan, although I trust I shall aim in good faith to perform the duties *temporarily* and *incidentally* thus assigned."

His day of trial, of doubt, and of anxiety was over. Success had come and come early, and at thirty-one he was not only a leader at an able bar, already especially distinguished for his ability and eloquence as an advocate, but had been elected by reason of his ability and great personal popularity without the aid of wealth or family, and in spite of a powerful opposition, to represent in Congress a district full of able and ambitious men. His studies and reading outside of his profession had been wide and various. Little is said as to how he acquired that wealth and picturesqueness of language which made his diction so rich and fascinating. It was doubtless to a great extent born with him, but it was already increased and perfected by reading the best English authors, and now as well as afterwards by translations from the Latin and Greek. No traditions remain of his career in the Massachusetts Legislature; but this experience alone would have prevented a man like him, notwithstanding the absorbing labors of his profes-

¹ President of the University of Vermont, and distinguished for his ability and learning, and especially as one of the earliest students of Coleridge in the United States.

sion, from continuing a mere lawyer. How high his ideal was as to the culture requisite to great success at the bar, is shown by a letter written ten years later to a young friend who thought of becoming his pupil: —

“As immediately preparatory to the study of the law, I should follow the usual suggestion to review thoroughly English history, constitutional history in Hallam particularly, and American Constitutional and Civil History in Pitkin and Story. Rutherford’s *Institutes* and the best course of Moral Philosophy you can find will be very valuable introductory consolidating matter. Aristotle’s *Politics* and all of Edmund Burke’s works and all of Cicero’s works would form an admirable course of reading, ‘a library of eloquence and reason,’ to form the sentiments and polish the tastes and enlarge the mind of a young man aspiring to become a lawyer and a statesman. Cicero and Burke I would know by heart; both superlatively great, the latter the greatest, living in a later age, belonging to the modern mind and genius, though the former had more power over an audience. Both knew everything.

“I would read every day one page at least, more if you can, in some fine English writer, solely for elegant style and expression. William Pinkney said to a friend of mine, he never read a fine sentence in any author without committing it to memory. The result was decidedly the most splendid and most powerful English-spoken style I ever heard.”¹

This list is pretty formidable as a course of reading collateral to the purely professional studies, which are engrossing enough for most men; but it is certain that Choate early accomplished all this and much more besides. The demand for him as an orator on special occasions and as a lecturer before lyceums and literary societies began at this time, and helped to make him known outside of legal circles.

Choate took his seat in Congress in December, 1831, and was a participator in the exciting debates arising from the Nullification contest during President Jackson’s first administration. Webster and Nathaniel Silsbee represented Massachusetts in the Senate, and John Quincy Adams, Nathan Appleton, Isaac C. Bates, George N. Briggs, John Davis, and Edward Everett were colleagues in the House. Besides these the latter body contained men like George Evans of Maine, Tristram Burges of Rhode Island, Verplanck of New York, Stevenson of Virginia (Speaker), Corwin and Vinton of Ohio, McDuffie of South Carolina, Wayne of Georgia, and Bell and

¹ Letter to Dr. R. S. Storrs, “Brown’s Life and Writings,” vol. i. p. 47.

Polk of Tennessee. With them the brilliant young lawyer was fully prepared to rank as an equal; and a speech which he early delivered on the tariff established his reputation as a parliamentary speaker.

“There were but few members present when he rose; but as he continued to speak, one after another came from the lobbies to the door, stood a moment to listen, were caught and drawn to their seats by the irresistible charm of his mellifluous utterance, till gradually the hall became full, and all for convenience of hearing gathered in a circle about the speaker. He had a nervous dread of thunder, and was never quite at ease in a severe storm. Before he had half finished his speech, a dark thunder-cloud rolled up and suddenly burst over the Capitol. Mr. Choate was standing directly under the central skylight, his face pale with a blackish paleness, and his whole frame tremulous with unusual excitement. The hearers caught his emotion, and listened intently as he went on. At the same time the increasing darkness, the rushing wind and rain, the lurid light through the distant windows, the red and searching gleams of the lightning, the rattling peals of thunder, the circle of upturned pale faces, lighted from above, gazing earnestly on the speaker, — all made it a scene not easily to be forgotten. He spoke in the modest deferential manner natural to him, with the same delicious uninterrupted flow of choice words, and with hardly a gesture except the lifting and settling of the upper part of the body; and he sat down amidst the enthusiasm of those who heard him, members of all parties rushing to offer their congratulations.”

In 1832 Choate warmly supported Mr. Clay, the candidate for the Presidency of the newly formed party, which two years later took the name of Whig. The result of the election, although foreseen, was still in its extent a disappointment and discouragement. “The news from the voting States,” he wrote to Mr. Everett in November, “blows over us like a great cold storm. I suppose all is lost, and that the map may be rolled up for twelve years to come. Happy, when it is opened again, if no State is missing.” He was renominated for Congress and elected by a large majority, Mr. Crowninshield’s friends no longer opposing him; but notwithstanding his rising reputation at Washington, in 1834 he resigned his seat in Congress and removed from Salem to Boston.

Even for a man of his ability and position, the change was attended with some risk, and more than one leading country lawyer has found that he made a sad blunder in doing so.

Boston was then a city of between sixty and seventy thousand inhabitants; and notwithstanding its great commercial and manufacturing interests, the bar seemed rather overmanned. Webster, although since his election to the Senate local practice was of subordinate interest to him, and Mason, who in 1832 had moved from Portsmouth, appeared in great cases, and Samuel Hubbard, Richard Fletcher, Franklin Dexter, Charles G. Loring, and Peleg Sprague (who after a brilliant career in the Senate had moved to Boston from Maine) — all Choate's seniors — were in possession of the field, and were not desirous of making room for another; while more nearly his own age were William H. Gardiner and Sidney Bartlett, and, among the young men, Benjamin R. Curtis, ten years his junior, but destined to rise more rapidly even than he had done to leadership. The traditions of the day are that the "young man from Essex" was greeted by his brethren with anything but cordiality. He was neither a Bostonian nor a graduate of Harvard, nor had he the overshadowing reputation of Mason, while his style of argument was derided, and to the end was never quite acceptable to the Boston taste. Indeed, although he lived in Boston during his entire after life, it can hardly be said he was *of* Boston. A recluse in his habits, not only was general society distasteful to him, but he seems to have mixed little in the literary circles of the city and its neighborhood, and what time was not devoted to his absorbing legal duties was spent in his library alone or in the company of one or two friends. Perhaps the fact that he and his family clung to the old New England Congregationalism had some influence in thus isolating him. "The two high-class religions of those days," says Dr. Holmes, "were white-handed Unitarianism and ruffled-shirt Episcopalianism. What called itself 'Society' was chiefly distributed between them. . . . A certain exclusiveness and fastidiousness not reminding us exactly of Primitive Christianity was the result."¹

Forming a partnership with Francis B. Crowninshield, a son of his predecessor in Congress, Choate entered into the conflict with confidence and indefatigable energy. And he fully maintained in this wider field the position which he had gained in the country. One of his earliest cases was that of

¹ Life of Emerson, pp. 34, 35.

the slave *Med*, *Commonwealth v. Aves*, at March term, 1836,¹ involving the vital question of whether a slave-owner could temporarily bring his slave into Massachusetts and restrain him of his liberty, when he appeared with Ellis Gray Loring as counsel for the Commonwealth; Mr. Curtis, who twenty years after so distinguished himself as one of the dissenting judges in the *Dred Scott* case, making the principal argument for the master. His success in getting practice was largely owing to his popularity among the younger members of the profession, who were attracted to him by his cordial manners, his amiable temper, and his readiness at all times to advise and assist them. Choate's position in Boston at about this time is well described in a letter from Sumner to Lieber, dated February 21, 1842. "I am glad you like Choate so well," he writes. "His position here is very firm. He is the leader of our bar, with an overwhelming superfluity of business, with a strong taste for books and learned men, with great amiableness of character, with uncommon eloquence and untiring industry."²

In 1841 both the Massachusetts senatorships became vacant, — the first by Mr. Davis's election as Governor, and the second by Mr. Webster's acceptance of the post of Secretary of State in President Harrison's Cabinet. The first was filled by the election of the Hon. Isaac C. Bates, of Northampton. For the second there were many competitors, including ex-Governor Lincoln, Mr. Dexter, Mr. Saltonstall, and Mr. Choate. The wishes of Mr. Webster had great influence in deciding who should be chosen, and he preferred Choate to all the rest. The latter's comparative youth, his long disconnection with politics, and the fact that he was not ambitious of a political career, fully account for the choice of the great Whig leader, who did not care to see one occupy his seat who might hereafter become a political rival, or who was at all unfriendly to him, as some of the other candidates were, and especially to his aspirations for the Presidency. His wishes decided the question, and Choate was elected by the united Whig party to the vacant seat. It was, however, with difficulty that he was prevailed upon to allow his name to be brought forward for it, and with extreme reluctance that he accepted the high honor. Pecuniary questions and the im-

¹ 18 Pick. 193.

² Pierce's *Life of Sumner*, vol. ii., pp. 201, 202.

possibility of retaining the great practice which he had got together after seven years of unremitting toil, and to which he looked as the means of supporting and making a permanent provision for his growing family, were the reasons which chiefly weighed with him in being so unwilling to take a position which to most men is the most attractive one in the government.

He took his seat at the extra session of Congress called by Mr. Tyler after General Harrison's death, and was appointed a member of the Committee on Foreign Relations, to the business of which he gave great attention, and many of his ablest speeches were delivered on international questions. His first was a defence, in reply to Mr. Buchanan, of Mr. Webster's letter on the case of Alexander McLeod on the 11th of June, 1841, which Mr. Sumner declared exhausted the subject and left nothing more to be said. It is doubtful if another member of the Senate could have delivered one so distinguished at once by close argumentation and brilliant eloquence. The case is too familiar to need to be stated here, but on the desirability of extending the immunity from personal responsibility enjoyed by soldiers by the law of nations, for acts done in obedience to the orders of their superiors, to all *de facto* soldiers and sailors, and to acts of hostility committed by a foreign power in time of peace as well as of war, the speaker was particularly eloquent, and what he said is well worth quoting:—

“ Every motive which operated to introduce the principle into the law of nations at first is a motive to an enlarged and benignant construction and application of it to-day. Its adoption originally marked a vast advance on the ferocious systems of what we call natural society. It was a grand triumph of reason as well as of humanity. Policy and wisdom carried the world up to it, as well as right feeling. It was resorted to to relieve war of its horrors while it lasted; to make it easier to go back to peace, which is the true condition of man; to ameliorate the stern lot of the millions whom, in one age and in one country and another, force or patriotism crowds into the ranks of their country, and to lift up war itself from a vulgar and dreary business of general butchery to a service of glory, in which great souls may engage without degradation and without deterioration. These were the motives in which the principle was made part at first of the law of nations; and every one of them is a motive to give it the most expanded application in the light of this better day. Sir, it is one

of the brightest glories of civilization. Do not cause it to be dimmed by a penurious and reluctant interpretation and application. To do so would be to misconceive the direction in which the world is moving. I do not know when wars shall wholly cease; but I believe, I trust, that as the world comes nearer to that time, it will regard war more and more every day as an enormous evil, if a necessary evil, and will desire to relieve it more and more every day by the offices of Christian and chivalrous forbearance towards individual actors, — struck down, unarmed and unresisting.”

Another most powerful speech was delivered by him on the 21st of February, 1844, again in reply to Mr. Buchanan, on the resolution for terminating the Convention of 1827 with Great Britain for the joint occupation of Oregon, in which, strong American as he was, he shows his hatred of gasconade and blustering talk of war. The resolution was introduced avowedly with a hostile intent. The passage where he repels the assertion that the majority of Americans were “penetrated by a deep-seated, deep-wrought sentiment of national enmity against” England, rises to a level of indignant eloquence worthy of Webster at his best. It is too long to quote, but the whole would have been well worth reading from the Secretary’s desk, in the Senate, last winter, when, with even less excuse, appeals were made to the worst passions of the people to stir up animosity against Great Britain. The resolution, after a debate of several days, was rejected.

In Choate’s first session in the Senate occurred that altercation with Mr. Clay which fifteen years afterwards was brought up against him for the alleged cowardice displayed by him at the time. The late Mr. Charles W. Storey, who was in the gallery of the Senate when it took place, always declared that the charge was grossly unjust. Choate’s intimacy with Mr. Webster caused him to be regarded to some extent as the mouthpiece of the administration, and in urging an amendment to the bill establishing a national bank, then under debate, he indiscreetly said: “Sir, if you adhere to the bill reported by the Committee, I fully believe you pass no bank charter this session. I doubt whether you carry it through Congress. If you do, I do not believe you can make it a law. I have no doubt you will fail to do so. I do not enter on the reasons of my belief. The rules of orderly proceeding here, decorum, pride, regret, would all prevent my doing it. I have

no personal or private grounds for the convictions which hold me fast ; but I judge on notorious and, to my mind, decisive indications."

Notwithstanding the disclaimer in the latter part of the quotation, but one interpretation could be put upon the passage, and that was that the speaker had special reason to know that a veto would intervene (as it did) to prevent the bill in its existing shape from becoming law. Choate had doubtless been told this by Webster, who was anxious to prevent such a result. Mr. Clay, the father of the bill, who was naturally angered at the suggestion, was sitting near the speaker, and interrogated him sharply as to his means of knowledge, and on Choate's declining to tell, became very overbearing in his manner, interrupting him in his explanation and really attempting to browbeat him. Choate's apparent hesitancy in answering, in Mr. Storey's opinion, arose simply from the embarrassment caused by his indiscretion and the difficulty of avoiding bringing in Mr. Webster's name, as well as saying, what would have been entirely out of order, namely, that the President would not sign the bill as reported ; but cowardice there was none, as it appeared to those who were in the Senate at the time. Choate closed by telling Clay " that he would have to take the answer as he chose to give it to him." The next day Clay made an ample apology, and the two statesmen remained on the most friendly terms.

Choate's period of service in the Senate was only four years, and it has been so overshadowed by his professional eminence that its importance has been greatly underrated. Although during that time he took little part in ordinary debate, his speeches fully equal those of any one of his colleagues, and had he remained a member he would have left a reputation surpassed by very few. His oratory, in many respects, was better suited to the atmosphere of Washington than of Boston, and Mr. Everett says a Western member of Congress declared to him that " he was the most persuasive speaker he had ever heard." Some of his ablest speeches, as those for instance on the treaty of Washington of 1842, were delivered in executive session, and no report of them remains.¹

¹ Mr. Everett said of his whole congressional career: " In the daily routine of legislation he did not take an active part. He rather shunned clerical work, and consequently avoided, as much as duty permitted, the labor of the committee

Loyalty to Webster (in his opinion at least) would have prevented his remaining in the Senate when the former was prepared to resume his seat there. In 1844 he offered to resign, but upon a canvass of the Massachusetts Legislature it was found that Webster, whose conduct in remaining so long in President Tyler's cabinet had given great offence to the Whigs, could not be elected to the place; but he was elected the next winter, for the term beginning March 4, 1845, when Choate's term expired. Nor could Choate have afforded to remain longer in the Senate. The pay and mileage did not then amount to more than two thousand or twenty-five hundred dollars a year, while the time spent at Washington greatly interfered with his practice in Massachusetts, especially before juries, which became almost impossible. He had some practice in the Supreme Court of the United States, where he was always heard with delight, but not enough to make up for what he lost by absence from Boston.

In 1844 Mr. Choate threw himself most energetically into the Presidential conflict in support of Mr. Clay, and in a speech before the Young Men's Whig Club, in Tremont Temple, on August 19, on the Annexation of Texas, when he was introduced by Charles Francis Adams, he used one of those picturesque expressions of which he uttered so many, and which at once became proverbial: "I know there are Whigs enough, Whigs from their mothers' arms,—now and always such,—who without the stimulus of uncompromising hostility to Texas,—without that, on a calm habitual estimate of the general politics involved, *could turn Mr. Polk back again upon the convention that discovered him* and win anew the victory of 1840."

Choate said when he left the Senate that his political life

room; but on every great question that came up while he was a member of either House of Congress, he made a great speech, and when he had spoken there was little left for any one else to say on the same side of the question. . . . But though abundantly able to have filled a prominent place among the distinguished active statesmen of the day, he had little fondness for political life, and no aptitude whatever for the out-doors management,—for the election legerdemain,—for the wearisome correspondence with local great men,—and the heart-breaking drudgery of franking cartloads of speeches and public documents to the four winds,—which are necessary in the present day to great success in a political career. Still less adroit was he in turning to some personal advantage whatever topic happens for the moment to attract public attention; fishing with ever freshly baited hook in the turbid waters of an ephemeral popularity." (Brown's Life and Writings, vol. i. pp. 267, 268.)

was over; and although he constantly gave his services to his party in election times and came forward in other crises, as he regarded them, in national affairs, to advise his countrymen, he never again held or sought any political office or position. On resuming his ordinary life as a practising lawyer in Boston, he found the number of his former competitors greatly thinned by death and retirement from the profession, and for the next fourteen years he was without a rival at this bar and was overwhelmed by the business which flowed in upon him. The Reports give a very inadequate idea of the extent of his practice, as he was retained to try many cases to the jury which he never afterwards followed to the court in banc. Like all eminent jury lawyers in his day, he accepted retainers in criminal cases as well as in civil; and his successful defence of one man, for a murder of which he was, with little doubt, guilty, and of which the public at any rate, as represented by the newspapers, had already before his trial began found him guilty, brought upon him a great deal of unpopularity, part of which clung to him through life.

It was the case of Albert J. Tirrell, a young man of respectable family and connections but of vicious life, indicted for the murder of his mistress, Maria Bickford, at a house of ill-fame, in Mount Vernon Avenue, near Pinckney Street, in Boston, early on the morning of Monday, October 27, 1845. Tirrell, who was married and was already under indictment for adultery with Mrs. Bickford, was known to have been with her in her room late in the evening and after the time at which the house was locked up for the night. Screams which awakened other inmates of the house, and the sound of some heavy body falling, were heard between four and five o'clock proceeding from the room. Soon after a person was also heard going downstairs, and within a short time the house was discovered to be on fire in the same room. When this had been put out, the body of the poor woman was found at some distance from the bed, partly burnt and with her throat cut from ear to ear. A razor was also found near the body, and articles of clothing belonging to Tirrell, in the room, and the wash hand-basin was filled with water thick with blood. Tirrell, early that morning, called at a livery-stable near Bowdoin Square, saying that "he had got into trouble, that somebody had come into his room and tried to murder him"; and he hired

a vehicle and driver who took him to his old home in Weymouth. He escaped to New Orleans, where he was arrested and brought back to Boston.

The atrocity of the murder caused immense excitement, and created a strong feeling against the man, whom all the circumstances of the case seemed to show was the only one who could have committed it. Choate was retained by the prisoner's friends as leading counsel for the defence, which he undertook in the ordinary course of business; and the trial took place in the Supreme Court, before Justices Wilde, Dewey, and Hubbard, at March term, 1846. The character of the evidence coming from the unfortunate inmates of the house, and the reluctance of the jury to convict a man capitally upon it, weakened the government case from the beginning, and strong medical testimony declared that the wound might have been self-inflicted. What, however, caused the most comment was the defence that the act was committed when the prisoner was in a state of somnambulism. It was proved that Tirrell had been subject to such fits from his early boyhood, and this defence was raised at the earnest request of the prisoner's family. Other testimony which need not be told here tended to explain some of the circumstances which seemed to bear most heavily against him.

No good report of Choate's speech to the jury exists. Like so many interesting and most important criminal cases in this country,—such as in England would be fully reported and published in permanent form,—all our knowledge of the case must be gathered from very inadequate and uncorrected newspaper reports. His argument, however, convinced the jury that the evidence did not establish the prisoner's guilt beyond a reasonable doubt. Mr. Justice Dewey, the best criminal lawyer on the bench, who had been Prosecuting Attorney for the Western District of the Commonwealth for many years, and who was never accused of being too lenient to criminals, delivered the charge to the jury; and in it he treated the question of somnambulism seriously, and instructed the jury that if this defence was established its effect would be like a case of insanity, and would entitle the prisoner to an acquittal. The jury, after an absence of two hours, found the defendant not guilty, and the foreman, on being asked, said that they had not considered the question of somnambulism, but found

their verdict independently of it.¹ Mr. Justice Wilde, who had sat on the Supreme Bench then for more than thirty years, and whose stern impartiality was such that at the time of his retirement from it in 1850 Chief Justice Shaw said of him, in his address to the bar, that "he seemed to have as little regard for parties as if they were expressed in algebraical characters,"² declared that he was satisfied with the verdict.³ Tirrell was next tried on an indictment for arson (then a capital offence), when Chief Justice Shaw presided himself and delivered the charge to the jury, and was also acquitted, the evidence against him being weaker for this offence than for the murder. He was subsequently convicted on the indictment for adultery, and received the heaviest sentence which the law allowed.

A great outcry arose on this result, such as arose in a less degree on Jeremiah Mason's successful defence of the Methodist minister Avery, tried at Newport in 1833 for the murder of Sarah Maria Cornell, whom he was believed to have seduced, and on Ogden Hoffman's like success in defending Robinson, at New York, in 1836, indicted for the murder of his mistress, Helen Jewett, under circumstances astonishingly like the case of Tirrell. But we think the outcry was not justified. To convict a person of any crime and *a fortiori* of a capital offence, every link in the chain of evidence necessary to a conviction must be established to the satisfaction of the jury, — be proved beyond a reasonable doubt, as the text-books say; and in all three of the cases above mentioned, as in the Leavitt Alley case, tried in 1873, and the Borden case, tried at New Bedford in 1893, overwhelming as the evidence against the prisoners appeared to be in them all, the government failed to satisfy the jury on some minor point, but one still essential to its case. Choate made himself especially unpopular by raising in Tirrell's case the defence of somnambulism, but the ruling of the court would seem to have justified him. Any defence which is good in law certainly may be raised by counsel. If

¹ If we can credit Mr. Parker, Mr. Choate fully believed in this defence. He pressed it again at the second trial.

² 6 Cush. 588.

³ The late Mr. William Minot once told the writer that he remembered Judge Wilde's coming into his father's office the day after the acquittal, and saying, in reply to the latter's severe comments on the verdict, that he did not think the jury would have been warranted in returning one of guilty.

there is evidence to sustain it, his duty requires him to raise it. "The law allows it, and the court awards it."

The whole subject of the ethics of advocacy is a most difficult one.¹ From the days of the Roman Republic to those of Dean Swift, satirists have attacked the legal profession with intense bitterness, for the supposed immorality of its occupation. Yet all admit that the law is a science, which must be learnt as much as medicine or engineering, and that its administration requires men especially trained in it; and every civilized state has found it necessary to educate a body of men to hear and decide cases brought by litigants before its tribunals, and to try persons accused of crime; and because a man untrained in jurisprudence is incompetent to prosecute or defend his own cause in court, a class of like educated men becomes necessary to undertake this prosecution or defence for him and in his stead. Concede this, and most of the objections to advocacy are conceded to be untenable. The forensic conflict between counsel, whatever its disadvantages may be, is the best practical method which the world has yet discovered of separating in each case truth from falsehood, of eliminating error, and of enabling the court and jury to come to a right conclusion in the premises.

The existing system seldom has been better defended than by Mr. B. R. Curtis, in presenting to the Court the resolutions of the bar on Mr. Choate's death. Speaking of the usual critics of it, he said:—

"Such persons begin with the false assumption that in the complicated cases which are brought to trial here, one party is altogether right and the other altogether wrong. They are ignorant that in nearly all cases there is truth and justice and law on both sides; that it is for the tribunal to discover how much of these belong to each, and to balance them, and ascertain which preponderates; and that so artificial are the greater portion of our social rights, and so complex the facts on which they depend, that it is only by means of such an investigation and decision that it can be certainly known on which side the real justice is. That, consequently, it is the duty of the advocate to manifest and enforce all the elements of justice, truth, and law which exist on one side, and to take care that no false appearances of those great realities are exhibited on the other. That while the zealous discharge of this

¹ It is treated with great learning, candor, and impartiality by Mr. Forsyth, in his interesting book entitled "*Hortensius; or the Advocate*," chapter x.

duty is consistent with the most devoted loyalty to truth and justice, it calls for the exertion of the highest attainments and powers of the lawyer and the advocate in favor of the particular party whose interests have been intrusted to his care."

How much discretion an advocate has as to what cases he will undertake, is a question upon which advocates themselves differ. Cicero thought that advocates had discretion, and could refuse to defend a very notorious criminal like Verres, for example; although, as Mr. Forsyth quotes him, his language on this point does not seem to be always consistent. Erskine, probably the greatest of modern — certainly the greatest of English — advocates, held otherwise, and when censured for accepting a retainer for Thomas Paine, defendant for a seditious libel, he justified himself with great force: —

"I will forever, at all hazards, assert the dignity, independence, and integrity of the English bar, without which impartial justice, the most valuable part of the English constitution, can have no existence. From the moment that any advocate can be permitted to say that he *will* or will *not* stand between the Crown and the subject, arraigned in the court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend from what *he may think* of the charge or of the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favor the benevolent principle of English law makes all presumptions, and which commands the very judge to be his counsel."¹

Erskine spoke chiefly of political cases, but his doctrine is the one generally accepted in England under ordinary circumstances in all cases. In this country a lawyer has more discretion and may refuse a retainer, but in Massachusetts the courts always appoint competent counsel to defend persons capitally indicted, who have no counsel of their own, and then the rules of practice will not usually permit them to refuse. When, however, counsel do accept such cases, in the ordinary course of their practice, as Choate did in Tirrell's case, however unpopular the cause may be, it is most unjust to censure them. The more unpopular the alleged criminal may be, the more he needs counsel, and, unless all criminal cases are to be

¹ Quoted in "Hortensius," p. 439. The italics are in the original.

handed over for disposal to the newspapers and Judge Lynch, the more rigidly should the charge against him be examined. Many cases may be found in the judicial annals of England and America, where men have been convicted and in some instances hanged, with the entire approval of the judge, the jury, and the public, for offences of which they were afterwards proved innocent. Yet counsel are at times deterred from undertaking the defence of prisoners, because of the unpopularity they would incur by so doing. Guiteau, if we remember aright, could find no counsel, except his brother, to defend him; and Mr. Lothrop, in his *Life of William H. Seward*, has again told the story of the intense feeling excited against so distinguished a man as he, because of his assuming the defence of the wretched negro maniac Freeman, when no one else dared to undertake it, and when the public in Western New York seemed determined that he should be undefended.

Another difficult question is, What are an advocate's duties when he does undertake any case? He represents his client, not himself; and everybody understands this fact. The case is to be tried according to the rules of law, and his duty requires him to see that these are applied. He must do everything for his client which an honorable man can do, everything consistent with truth and honor, — a rule easily stated, but we admit sometimes difficult of application, and as to the application of which in individual cases people will differ. It is sometimes said that counsel in thus defending their clients often become too intensely partisan, and press their side of the case too eagerly. It is doubtless so; but the same is true in the halls of legislation of statesmen, whom party feeling and party spirit too much influence, while in ecclesiastical matters we see the saddest illustration of the difficulty which pious, devout men labor under of looking at both sides of any question they are interested in, and of doing justice to those differing from them. In these cases people are supposed to speak their deliberate opinions, — an advocate is not, but to be simply saying the best which can be said for his client, in the case on trial. We are of course, in all this, speaking of honorable advocacy, not of the rules of morality (if we can use the expression), which prevail among unprincipled or unscrupulous lawyers, of whom there are far too many in the profession, and to

whose misdeeds the greater part of its unpopularity may be traced.¹

Mr. Choate intended to prepare his argument in Tirrell's case for publication, but never found time to do so, and nothing remains of it but the imperfect newspaper reports of the day. We cannot forbear to quote from his *Life* one passage from these in which he commented upon a witness called out of place for the Commonwealth in one of the trials after the defence was closed, — familiar though it be to lawyers, — as an excellent example of his satirical humor: —

“Where was this tardy and belated witness who comes here to tell us all he knows and all he does not know, forty-eight hours after the evidence for the defence is closed? Is the case so obscure that he never heard of it? Was he ill or in custody? Was he in Europe, Asia, or Africa? Was he on the Red Sea, or the Yellow Sea, or the Black Sea, or the Mediterranean Sea? Was he at Land's End or at John O'Groat's house? Was he with Commissioners on our North-eastern boundary, drawing and defining that much vexed boundary line? Or was he with General Taylor and his army at Chihuahua, or wherever the fleeting Southwestern boundary line of our country may at this present moment be? No, Gentlemen, he was at none of these places (comparatively easy of access) but — and I would call your attention, Mr. Foreman, to the fact, and urge it upon your consideration — he was at that remote, more inaccessible region, whence so few travellers return — Roxbury.”

In 1848 a proposal was made to Mr. Choate, by the Corporation of Harvard University, to take one of the Professorships in the Law School there. It would have necessitated residence in Cambridge and his retirement from jury practice; but his duties would have been so arranged (as in the case of Mr. Justice Story) that he could be always in attendance at the sessions of the Supreme Court at Washington, where his emoluments would, it was supposed, be very large. He declined, after consideration, to entertain the proposition. In the same year a seat on the Supreme Bench of Massachusetts was offered and declined, and nine years later the seat on the Supreme Court of the United States, made vacant by Mr.

¹ The well-known defence of legal advocacy by Dr. Johnson, whose “majestic common-sense” and hatred of all cant, combined as they were with a tender conscience, make him a high authority on all matters of casuistry, is in *Boswell's Life* (Hill's edition), vol. ii. p. 47; vol. v. p. 26. It is not worth while to notice the abuse of Mr. Choate on this subject by a virago like Mr. Wendell Phillips.

Justice Curtis's resignation, was at his disposal, and was likewise declined. Pecuniary considerations may have weighed with him in refusing these positions, but he declared that their duties would have been distasteful to him, and it may be doubted if he would have added to his reputation by undertaking them.

Choate's professional connection with Mr. Crowninshield terminated in 1849, and he associated himself with his nephew and son-in-law, Mr. Joseph Mills Bell, for the rest of his life. Up to this time, laborious as had been his life and great his reputation, he had been so careless of his private affairs and so indifferent to pecuniary gain, and even to the collection of his fees, that he had saved little or nothing. From this time, however, his interests were more carefully looked after, his rate of charges raised, and the fees collected; but his income, even after this, seems small to us, and was not so large as some other lawyers of less ability made. For the last ten years of his life it averaged \$18,000 a year. His largest, in 1856, was \$22,000, and the largest fee he ever received but twenty-five hundred dollars. Lawyers now sometimes receive in one case a larger sum than his annual income ever was. In 1853 on the Attorney-Generalship of the Commonwealth becoming vacant by Mr. Clifford's election to be governor, Mr. Choate accepted it, hoping thus to get rid of his criminal practice, but its duties were incompatible with his enormous private practice, and he resigned it at the end of the year. The yearly number of causes which he tried and argued, including hearings before legislative committees, was over seventy. At the *nisi prius* sittings of the Supreme Court in Boston, he was in almost every large case, and at one session, when he was engaged in the trial of a case at Newport, it was difficult to occupy the time of the court.

Such a practice under our system, where the same man is both attorney and counsel, could not be managed without the most indefatigable industry, and then was larger than even Choate could do well. Of his industry, his son-in-law, Mr. Edward Ellerton Pratt, says, in a letter to Judge Neilson:

"Mr. Choate was the most untiring worker I ever met. He was up by five o'clock in the morning as a rule, made a cup of tea for himself, worked awhile, went out for a walk, came home to breakfast, went to business at nine, worked all day, and perhaps was before some legis-

lative committee for an argument in the evening; and I have known him to be all that time without taking any food. Indeed, I have seen a check for half a dollar which he gave at the close of such a day, when, having no money with him, he became conscious of the need of refreshment."

Such absorption in his profession was in some ways detrimental to him, and greatly narrowed his horizon and his sympathies. Kind-hearted man as he was, he never seems to have shown any interest in philanthropic and social questions. About slavery we shall speak hereafter, but neither the condition of the poor, education (except high culture), temperance, nor any other cause of religion or benevolence attracted him so as to induce him to appear on a platform in its behalf. In this respect he was a striking contrast not only to Mr. Everett and Mr. Winthrop, but even to Mr. Webster. We are told that he was serious in his religious opinions, read much in theology, and firmly believed the doctrines with which old New England Congregationalism is associated; but the only occasion when he ever seems to have taken part in any denominational gathering was when he made an address at the celebration of the completion of the first twenty-five years of his pastor's ministry. He doubtless subscribed liberally for religious and charitable objects. But with this, his services to them terminated.

All this was an undoubted defect. It prevented too his being in touch with large classes of the community, with whom many other public men were. His political and literary addresses were all designed for educated men. It may be said that there was then a good deal of frothy philanthropy, which was offensive to his conservative instincts and his culture; that the violence with which many causes were advocated and the abuse heaped upon men who did not, in supporting any cause, come up to the standard deemed essential by its special champions, because they saw that there were two sides to every question, or recognized honest differences of opinion in respect of it, disgusted him, and strengthened his inclination to leave these subjects to less busy men; content with subscribing, to the best of his ability, to those which commended themselves to his judgment; but this explanation covers only a few subjects, and is no sufficient excuse.

His one great love was his country; his passion, nationality.

Born and reared in rural Massachusetts, educated in New Hampshire, early in life becoming acquainted with the capital of the country, as a student and afterwards as Congressman, and not settling in Boston, his future home, till he was thirty-five, no strong local attachment or feeling interfered with his love for the Union at large. A New Englander by descent, birth, and education, his affection for New England was absorbed in his affection for the whole country. Her history, her astonishing growth, her future, were his constant theme. He was a thorough and enthusiastic American. In travelling in Europe he saw no country like his own; and although far removed from an Anglophobist, he was constantly comparing everything English with the like thing in his own land, to the disadvantage of the former. The American Constitution was superior to the English; law was better administered here than in England; the Presidential election of 1840 was more dignified than the Parliamentary general election of 1841; John Quincy Adams was a more remarkable man than the Duke of Wellington; Longfellow was a better poet than Tennyson, — these and other comparisons, often on most superficial and doubtful premises, he was constantly making through life, and they constantly appear in his speeches, letters, and conversation.

He conscientiously believed that the Union formed in 1787 was of overwhelming importance to the future of the country, and of free government throughout the world, and that to its preservation everything else should be subordinated. This decided his attitude about slavery. It is needless to say that he recognized the iniquitous injustice of this institution, its deteriorating influence on the dominant race, its terrible injury to any country where it existed; but as to practical action, he would treat it only in its political aspects. The moral indignation concerning it, which stirred up so many conservative men, and the terror with which they, and at last the largest part of the North, regarded its spread into new territory and its unwearied aggressions, affected him very little. It was a local institution, recognized by the Constitution (which without such recognition could not have been adopted), and must be acquiesced in by all loyal men, and its ultimate amelioration and extinction, for which he hoped, left to the States in which it existed. It was a question like the Tariff

or the United States Bank, only more difficult and dangerous. Opposed as he was to its extension to the free territories, not yet formed into States, he was hardly willing to risk the Union in order to forbid it, but adopted Mr. Webster's easy optimism that nature had forbidden its permanent existence there. In 1848 he earnestly supported General Taylor's candidature for the Presidency, and in 1852, greatly as he was disappointed at the refusal of the Whigs to nominate Mr. Webster, he cheerfully voted for General Scott, and, unlike many of Mr. Webster's friends, and Mr. Webster himself, desired his election.¹ He strongly supported the compromise measures of 1850, which is not surprising when we remember Mr. Webster's great influence over him, and that many public men of far stronger antislavery feelings than his did the same. But the wanton repeal of the Missouri Compromise Act in 1854 did not arouse in him the indignation which it stirred up in many; or, on the consequent extinction of the Whig party, prevent his supporting for the Presidency in 1856 Mr. Buchanan, the Democratic candidate, — whose party was responsible for this uncalled-for reopening of the whole slavery question, — in preference not only to Colonel Fremont, nominated by the newly formed Republican party, but to Mr. Fillmore, an old Whig, whom most Whigs, feeling as he did, supported.

Nor did he confine himself to simply announcing for whom he intended to vote. He threw himself actively into the canvass, and dwelt vehemently upon the dangers of a "geographical" party, — forgetting, however, that all the Southern Whigs but two or three, by refusing to support their Northern associates in opposing the Kansas-Nebraska Bill, had made the issue geographical. In all this he was certainly sincere. To separate himself from his old friends must have been truly painful; to find himself, proud man as he was, on the same platform with politicians like Caleb Cushing and Benjamin F. Butler, almost humiliating. He doubtless hoped that Mr. Buchanan, unlike poor President Pierce, in the toils of Jefferson Davis and Mr. Cushing, would prove a conservative

¹ It has been said that in the Whig Convention at Baltimore in 1852, which Mr. Choate attended, and where he attracted great attention, a proposition was made for the party to unite upon him as a compromise candidate, but that he positively refused the use of his name.

President; would put an end to Pierce's "jingo" foreign policy, and impartially suppress the guerilla war in Kansas. As to the first, on Mr. Buchanan's election he was not disappointed. Notwithstanding the unsavory odor of the "Ostend manifesto," the new President's conduct of foreign affairs was the most creditable part of his administration. But when, so far from protecting the Northern settlers in Kansas, he seemed determined to force slavery upon the inhabitants, in utter disregard of their wishes and their votes, Mr. Choate was silent.

We must remember that he, like Mr. Everett and many other Northern statesmen, sneered at as "Union savers," foresaw that the continued agitation of the slavery question would end in civil war. This the great majority at the North did not see, or we should hardly have elected Mr. Lincoln in 1860. It was almost impossible for Northern men to believe that the South was really in earnest in its threats of secession. Knowing that the South had no real grievance, that these constant attempts to extend slavery had been greatly aided by previous threats of the same kind, the North generally took the renewed threats to be only a "game of bluff." "You cannot kick the South out of the Union" was a common saying in those days among serious politicians. Mr. Choate, like Mr. Everett, knew better. "I shall not probably live to see it," he said some years before his death, "but I fear that there will be, ere long, a civil war between the North and the South." This determined his course; for he could not, like many Northern men, "let the Union slide." Flinging out one of those characteristic electrical sentences which were almost instantly in everybody's mouth, "We join ourselves to no party," he wrote, "that does not carry the flag and keep step to the music of the Union."

His course brought upon him great unpopularity, and this was enhanced by a sentence of his which was taken out of its context and quoted far and wide. Speaking of the Republican party (his *bête noire*, from its geographical character), he wrote: "It will represent to their eye [the South] a vast region of States organized upon antislavery, flushed by triumph, cheered onward by the voices of the pulpit, tribune, and press; its mission to inaugurate freedom and put down 'the oligarchy';¹

¹ One of Mr. Sumner's favorite appellations of the Southern people, as was also "the oligarchs of slavery."

its Constitution the *glittering and sounding generalities of natural right which make up the Declaration of Independence.*" The words in italics were unfortunate, because they might so easily be misunderstood, and lent themselves so easily to misrepresentation. That people who never read the entire letter and knew nothing of American history should misunderstand them, that demagogues should misrepresent them, was natural; but that experienced statesmen and thoughtful scholars could have done the writer the injustice which they did do him for using the phrase, could only have been possible during the excitement of a most momentous political conflict. Had he lived, this love of Union would have made him an ardent supporter of the National Administration in its struggle to suppress the insurrection and to preserve this same Union when civil war finally broke out.

Literature was the solace and amusement of Mr. Choate's leisure hours. He had formed a large miscellaneous library of six thousand volumes, and probably his happiest hours were spent in it, in the society of one or two kindred spirits, and (when these were absent) of the "immortals," whom he loved so well. Ordinary society he avoided; and although country-bred and admiring for the moment grand scenery, country life and country pursuits had no attraction for him. In this respect he was a great contrast to Mr. Webster. He was not a sportsman; we never hear of his riding. His only exercise was walking. He gave much more time than he could afford to lectures and literary addresses before colleges, mercantile library associations, mechanics' institutes, and lyceums. Those of them which are printed in his works have a high degree of excellence, especially when we consider how great his professional labors were, and how little time he had in which to prepare them. Frequent visits made by his neighbor Mr. Everett to him, when confined to the house by an accident, four years before his death, changed the relations between these two distinguished men from an agreeable acquaintance into an intimate friendship. Unlike as they were intellectually, they had many things in common,—the same love of country, the same opinions on the impending political crisis, and the same wide acquaintance with and enthusiasm for literature and scholarship.

Mr. Choate's classical acquirements, and even his literary

accomplishments, have been questioned since his death, but they are proved by the best testimony. Mr. Everett said of him, that "he did not think it the part either of wisdom or good taste to leave behind him, at school or at college, the noble languages of the great people of antiquity; but he continued through life to read the Greek and Roman classics. He was also familiar with the whole range of English literature; and he had a respectable acquaintance with the standard French authors." That accomplished scholar, Mr. G. P. Marsh (who was his contemporary at Dartmouth College), also says: "Mr. Choate read Greek and Latin with facility and pleasure, and had a fair acquaintance with the literature of more than one Continental nation." We have heard a competent living scholar, too, speak in terms of high commendation of his translations from Thucydides and the Annals of Tacitus, books seldom, if ever, read in those days at American colleges.¹ The great orators of ancient and modern times were of course eagerly studied by him. Cicero and Burke were his especial favorites, and he was always ready to take up the cudgels in their defence against their detractors. Of contemporary authors, Wordsworth and Coleridge, whom he studied before it was the fashion to read or admire them, held a warm place in his heart; but above all others, Sir Walter Scott, whom he eloquently defended against the envious (or at least dyspeptic) disparagement of Carlyle.

Mr. Choate remained in practice to the last. His personal friends with pain saw him, when he needed rest and retirement, still obliged to labor at the bar. Mr. Everett, after his death, alluded most feelingly to this:—

"Commanding from an early period a valuable clientage, and rising rapidly to the summit of his profession and to the best practice in the courts of Massachusetts and in the Supreme Court of the United States, with no expensive tastes or habits, and a manner of life highly

¹ Mr. Parker tells a story of Choate's having insisted, in a conversation between them, during a trial in court, that the penult of *Neptunus* was short. Mr. Dana says he never made a false quantity. Be this as it may, it is inconceivable that a man with such a knowledge of Latin as he unquestionably had, and who studied it so closely that he acquired the Continental pronunciation of it late in life, could have been guilty of a blunder unworthy of a Freshman; and it is not uncharitable to believe that, by lapse of memory, Mr. Parker unwittingly transposed the part of each in the conversation, and that it was he, and not Mr. Choate, who insisted on the pronunciation of *Neptūnus*. Mr. Parker calls this episode in court, "airing the classics." They certainly needed it.

unostentatious and simple, advancing years overtook him with slender provision for their decline. He reaped little but fame, where he ought to have reaped both fame and fortune. A career which in England would have been crowned with affluence, and probably with distinguished rank and office, found him at sixty chained to the treadmill of laborious practice. . . . He assumed the racking anxieties and feverish excitements of his clients. From the courts, where he argued the causes intrusted to him, with all the energy of his intellect, rousing into corresponding action an overtaken nervous system, these cares and anxieties followed him to the weariness of his midnight vigils and the unrest of his sleepless pillow."

Another warm friend and admirer,—an accomplished lawyer and jurist,—who held a seat on the Supreme Court during the last six years of Mr. Choate's life, has spoken in the same strain:—

"Mr. Choate was, at the bar or in his own library, the most interesting man it has been my privilege to know; yet, during the last six years of his life (and it was during those years I saw him most frequently) I never heard him, even in the most brilliant of his efforts, without a feeling of sadness. He not only worked too much, but he had no just economy of labor. He did a thousand things which men of narrow capacity might have done as well or well enough. He expended upon his work a vast amount of superfluous strength. . . . If he had tried half as many cases, worked half as many hours, he would have been a yet greater man, and his life might have been spared to the courts of which he was the pride and ornament; nay more, those large and generous powers might have been used upon a broader theatre and for nobler and more enduring service."¹

He at last began to feel this terrible strain, and earnestly wished for some relief.² Finally, it broke him down. Several times heavy causes in which he was engaged had to be postponed in consequence of his more frequent attacks of illness; and in the spring of 1859 his condition became alarming. The last time he appeared in the court in banc was in the cases of *Fitchburg Railroad v. Gage and Tudor*, argued together on March 29, and reported in the twelfth of Gray. Afterwards he began a will case at the *nisi prius* sittings at

¹ Speeches of B. F. Thomas, p. 123.

² Mr. Parker says that he would have accepted a foreign mission, if offered by Mr. Buchanan, to gain some respite from the labors which were killing him. We doubt whether, under all the circumstances, he would have thought it becoming in him to accept office from that administration.

Salem, the scene of his earliest triumphs, but had to break it off, and the courts saw him no more. It was hoped that a foreign voyage might help to restore his health, and he sailed, with his son, for England on June 29, intending to pass the rest of the summer in the Isle of Wight; but he became so much worse that he had to be put ashore at Halifax, where he died, somewhat suddenly, on the 13th of July, in the sixtieth year of his age. His death made a great impression in Boston, and for the time the voices of detraction, with one or two of the usual exceptions, were hushed. Besides other notices of his death, the unusual honor of a great meeting in Faneuil Hall was accorded to his memory, held at noon on July 22 (the day before the funeral), when the Mayor presided, and eloquent speeches were made by Mr. Stevenson, Mr. Chandler, and Mr. Everett.

Mr. Choate was considerably above the medium height, and well though rather sparely built. His pale, deeply furrowed intellectual face and large melancholy dark eyes, set off as it were by a great head of curly black hair, made him one of the most striking-looking men in Boston, and drew toward him, wherever he was, universal attention. He was of a most affectionate disposition, warmly attached to his family and friends, and deeply beloved by them in return. From his boyhood he had been distinguished for the sweetness of his disposition. His temper was seldom if ever ruffled; and this, with his charming manners, made his legal brethren, especially the younger men, devoted to him. His bearing in court was a model of courtesy, amiability, and high breeding, and he bore with marvellous good nature rude remarks from the bench or from opposing lawyers, sometimes in silence, but more frequently answering by a quick witty retort, which left him the victor; or, if the rudeness emanated from the judge, and decorum forbade his replying, making in a lower tone, for the benefit of his brethren, some sarcastic comment, which convulsed the bar with merriment. He was remarkably free from vanity; but he loved appreciation, and was evidently pleased when he observed, as he often must have done, how the very young men, and especially the law students, watched his every motion with eyes of ardent admiration. No member of a profession remarkably free from jealousy had less of it than he; no man was more generous in his appreciation and praise of his juniors and his opponents.

His wit and humor were of the most exquisite kind, but so delicate and so dependent upon the circumstances which called them forth that his sayings always lost much of their aroma in repetition. "His wit," said Mr. Dana, "did not raise an uproarious laugh, but created an inward and home-felt delight, and took up its abode in your memory. The casual word, the unexpected answer at the corner of the street, the remark whispered over the back of the chair while the docket was calling, you repeated to the next man you met, and he to the next, and in a few days it became the anecdote of the town." A droll extravagance of statement, sometimes satirical and sometimes only mirthful, was one of his most amusing characteristics. We shall not attempt to quote any of the numerous stories and *ana* and quaint sayings connected with his name. They are to be found in the books we have cited at the beginning of this memoir, and are also told more or less inaccurately (generally the former), in innumerable magazine articles and books of legal anecdotes.¹

Choate was the greatest of American advocates. In some of the requisite qualities for trying and arguing causes, others have surpassed him; but no other combined so many of these to an equal degree of excellence, — great and ready knowledge of law, great quickness of apprehension, great legal acumen, great logical powers, great mastery of facts, great familiarity with human nature, great sagacity in the conduct of a case, great skill in examining witnesses; and all this adorned by a wide and varied scholarship and a splendid eloquence. Pinkney equalled him perhaps in eloquence; he and Binney and Curtis may have surpassed him in arguing causes to the court, but they were very inferior to him before juries. Mason more nearly rivals him and perhaps won more verdicts, but wanted his literature, his refinement, and his eloquence, and was unequal to him in argument. Webster, great on great occasions which called forth his powers, may, as Mr. Hillard said, be

¹ Even so experienced a literary man as Mr. E. P. Whipple makes a mistake in relating one by which he entirely destroys the point of the story. Mr. Choate, referring to Mr. Justice Story's habit of summing up to juries most vigorously in behalf of the one party or the other, said, with humorous exaggeration: "He never delivered a *charge to a jury* in which he did not argue the case better than the counsel on either side, and for which he might not have been impeached." Mr. Whipple makes him say, "Never delivered a *judgment*," etc., which is nonsense.

regarded rather as "a great man practising law" than as "a great lawyer." Some of these eminent men surpassed Choate in professional learning, but he always had a supply of law fully adequate to his wants. At a dinner-party in Washington — we believe, during Mr. Choate's lifetime — Judge Curtis was asked if he regarded him as a learned lawyer, and replied emphatically, "I have very frequently been Mr. Choate's junior, I have very frequently been opposed to him, and I have presided in court when he has tried and argued cases, and I never knew the time when he did not have law enough for the occasion. Such a man I call a learned lawyer";¹ and he was right, when we consider the variety of Choate's practice, — in banc, at *nisi prius*, in common law, in equity, in admiralty and in criminal law, — and what a wide and varied acquaintance with law he must have had to justify such praise. In all the rules of practice and of evidence his knowledge was unrivalled.²

Judge Sprague, one of the ablest and most experienced lawyers and judges in New England, said of him, that in examining and cross-examining a witness, he had never seen his equal. Nothing could exceed the courtesy with which he usually treated one, believing that even a hostile witness was more manageable if kept in good humor. Generally he cross-examined very briefly, and he had great contempt for that style of cross-examination which Sir James Scarlett called "repeating over every question put in chief in a very angry tone." Nor did he approve of browbeating a witness. "Never treat a witness," he once said, "as if he were lying, unless you feel sure that he is lying"; and he acted on this maxim. At times, however, when witnesses were perjuring themselves, he could cross-examine with great severity, and they seldom escaped exposure at his hands.

He managed a female witness with great dexterity. His genuine deference of manner, his melodious voice, his sweet, winning smile, made her his friend, and, if she did not aid him in her testimony, it was not her fault. We heard him once say, in closing her examination, to a young woman, who was

¹ This anecdote was told to the writer by the late Mr. Justice Swayne.

² His favorite text-book is said to have been Phillipp's on Evidence, with Cowen and Hill's notes, — an almost inexhaustible mine of law for those who had the ability to explore it, but which to many experienced lawyers was as bewildering as Bradshaw's Railway Guide is to a school girl.

testifying to occurrences some years past, "Miss ——, it pains me exceedingly to have to put such a question to a lady, but my professional duty requires of me that I should ask you your age"; and she told him with perfect good-nature. Of women as witnesses generally, he once said, "with humorous solemnity," to a young lawyer who was about to try a case where a great many women had been summoned as witnesses, "Let me give you my dying advice, — never cross-examine a woman. It is of no use. They cannot disintegrate the story they have once told; they cannot eliminate the part that is for you from that which is against you. They can neither combine, nor shade, nor qualify. They go for the whole thing; and the moment you begin to cross-examine one of them, instead of being bitten by a single rattlesnake, you are bitten by a whole barrel full. I never, except in a case absolutely desperate, dare to cross-examine a woman."¹

His oratorical powers were carefully cultivated from the time he was in college, but they were to a great extent born with him, — the marvellous voice, the fluency of speech, the gift of language, the dialectic skill, the brilliant fancy, the rich imagination. "I never met," says Mr. Marsh, "any other man with such a knowledge and command of all the resources of English as had Mr. Choate, and he had the rare gift of using words so that each made those with which it was connected bring out the best, or at least some special meaning. He told me that he habitually read the dictionary, and in speaking of his translation of a part of Thucydides and other classics, he said he undertook the work for the sake of the English, not the Greek."² This wonderful mastery of words often (to plagiarize from Sydney Smith) made him an instrument of forensic oppression. He used it to excess, and sometimes wearied dull, prosaic jurors and overworked judges; and he caused many people to imagine that he was a mere rhetorician, whereas Mr. Dana said, on his death, that "he was the greatest master of logic we had among us." His rhetoric was sometimes extravagant, and at all times dangerous for imitation. His speeches to juries and on the platform, and even to the court, were delivered with great vehemence of gesture and often loudness of voice. They were always carefully prepared, and

¹ Letter of the Hon. E. B. Gillett, in Neilson's "Memories," pp. 337, 338.

² Ibid. p. 379.

he usually had a large pile of manuscript before him, although he seldom referred to it. Like Mr. Gladstone's, they sounded better than they read. The orator's commanding presence, his expressive action and powerful delivery, enabled the auditor to follow with ease the long balanced periods, which almost take one's breath away when read, and carried off the somewhat superabundant ornament and occasional profusion of illustration.

All those who were Choate's competitors at the bar are gone; the survivors of those who were associated with or against him as junior counsel are few in number and every year are becoming fewer, and before many years the last of those who even heard him will have passed away; and with them his memory will gradually fade. We must sorrowfully apply to him the pathetic language of Sir John Taylor Coleridge concerning Sir William Follett, that "neither as a lawyer nor a legislator has he left any lasting monument behind him of his great abilities; the gainful business of the day swallowed him up. Like 'a well-graced actor,' the admired one of his day, he lives only in the recollection of one fleeting generation who saw him. We have a distinct idea of him, as our fathers had of Garrick; henceforward a mere tradition of him will remain,—tradition becoming every year more uncertain, obscure, indiscriminate."

Mr. Choate's great professional, literary, and political eminence was early recognized by colleges and learned societies. Yale conferred upon him the honorary degree of Doctor of Laws in 1844, Harvard and Dartmouth in 1845, and Amherst in 1848. He was elected a member of the Historical Society, June 25, 1835, but was too busy often to attend its meetings. He was also a Fellow of the American Academy of Arts and Sciences.